

# The Treasury

## Reserve Bank Act Review Phase 2 Consultation 3 Submission Information Release

February 2021

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# Safeguarding the future of our financial system

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## *Summary of submissions – third consultation*

Phase 2 of the Reserve Bank Act Review

December 2020



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# Introduction

## Background

This document provides a summary of public submissions received on the third consultation for Phase 2 of the Review of the Reserve Bank of New Zealand Act 1989 (the 'Review'). The Review focuses on the Reserve Bank's financial policy framework, which provides the basis for prudential regulation and supervision. It also deals with the Reserve Bank's governance arrangements. The Minister of Finance released the [terms of reference](#) for the Review on 7 June 2018.

### The first and second consultations

The Review has included three rounds of consultation. The first consultation (C1) was conducted over 2018 and sought feedback on key topics crucial in shaping the Review's overall outcomes, such as the Reserve Bank's financial policy objectives, governance structure, the case for and against depositor protection, and whether the Reserve Bank should retain responsibility for prudential regulation and supervision.

Following C1 the Minister of Finance decided that:

- the Reserve Bank should retain its current role as New Zealand's prudential authority
- registered banks and licensed non-bank deposit takers (NBDTs) should be regulated within a single framework, and
- New Zealand should have a formal scheme to protect depositors.

The second consultation (C2) was conducted over 2019, and was divided into two parts - C2A and C2B. C2A focused on the Minister's decisions around a single regulatory perimeter for banks and NBDTs and depositor protections, as well as additional details of topics covered in C1 including the Reserve Bank's financial policy objectives and governance arrangements. C2B provided a more detailed focus on a number of design aspects of the prudential regime.

### Cabinet decisions

In December 2019, Cabinet made a number of decisions following the first and second consultations. These included final decisions that provided the basis for the [Reserve Bank of New Zealand Bill](#) (commonly referred to as the 'Institutional Bill') that was subsequently introduced into Parliament in July 2020. The Bill:

- establishes a new governance board for the Reserve Bank
- introduces a new high-level financial policy objective for the Reserve Bank — "protecting and promoting the stability of New Zealand's financial system"
- provides for a *Financial Policy Remit* issued by the Minister of Finance to which the Reserve Bank must have regard when pursuing its financial policy objectives
- strengthens the accountability of the Reserve Bank through greater alignment of reporting requirements with state sector practice.

In December 2019, Cabinet also made a number of in-principle decisions relating to the regulation of 'deposit takers' and the introduction of a deposit insurance scheme. Key decisions here included:

- prudential 'standards' set by the Reserve Bank will be the primary tool for imposing regulatory requirements on deposit takers (i.e. banks and NBDTs)
- accountability requirements on directors of deposit takers will be significantly enhanced
- the Reserve Bank's supervision and enforcement tools will be strengthened
- the crisis management framework will be clarified and strengthened
- under the new deposit insurance scheme, deposits will be insured up to \$50,000.

A summary of submissions from the first two rounds of consultations as well as Cabinet's final and in-principle decisions can be found [online](#).

### **The third consultation**

The third consultation, and the subject of this document, follows on from part 2B of the second consultation and the subsequent Cabinet in-principle decisions outlined above. The third consultation sought feedback on tools and settings to enhance the resilience of deposit takers, specifically the prudential regulatory regime and deposit insurance scheme which would sit within a new 'Deposit Takers Act' (DTA).

The third consultation process provided two avenues for the public to express their views: a consultation document (C3) and a retail deposit survey, which focused on deposit insurance. The [consultation document](#) was divided into 7 topics:

- purposes of the Deposit Takers Act
- the regulatory perimeter
- standards and licensing
- liability and accountability
- supervision and enforcement powers
- resolution and crisis management
- depositor protection.

The consultation document was uploaded to the Review website along with supporting materials on 13 March 2020. The closing date for submissions on the third consultation was extended to 23 October 2020 after work was effectively paused by the need to respond to COVID-19. Some tolerance for late submissions was provided.

## Submissions on the third consultation

The third consultation received 35 public responses. A further 23 responses were received on the retail deposit survey. The overwhelming majority of submissions to the consultation document were from organisations (including representatives of large banks, small banks and the non-bank lending sector). This was unsurprising given the technical nature of feedback sought following the high-level decisions made by Cabinet. The retail depositor survey was used to invite individuals to comment on proposals that had direct impacts on retail depositors.

This document summarises these submissions according to the topics consulted on. The retail deposit survey results are included within the deposit insurance chapter. The questions contained in the consultation document are outlined for convenience in Appendix 1, and the survey questions are outlined in Appendix 2.

Submitters were broadly comfortable with many of the proposals made on C3. There was broad support for a number of the proposals including:

- Regulatory perimeter – support for the overall approach to the regulatory perimeter, including the adoption of a perimeter based on the activity of borrowing and lending.
- Standards and licencing – support for the proposed standards and licensing framework, and for the Reserve Bank to apply different standards to different classes of entity.
- Liability and accountability – support for adopting a regime with a greater focus on civil pecuniary penalties, rather than criminal penalties.
- Supervision and enforcement powers – support for widening the Reserve Bank’s supervisory and enforcement toolkit subject to appropriate safeguards.
- Crisis management and resolution – support for the overall direction of travel.
- Deposit insurance – submitters and survey responders were broadly in support of the coverage of transactional, savings and term deposits.

Submitters did raise common concerns, as well as questioning the rationale of a few proposals. These included:

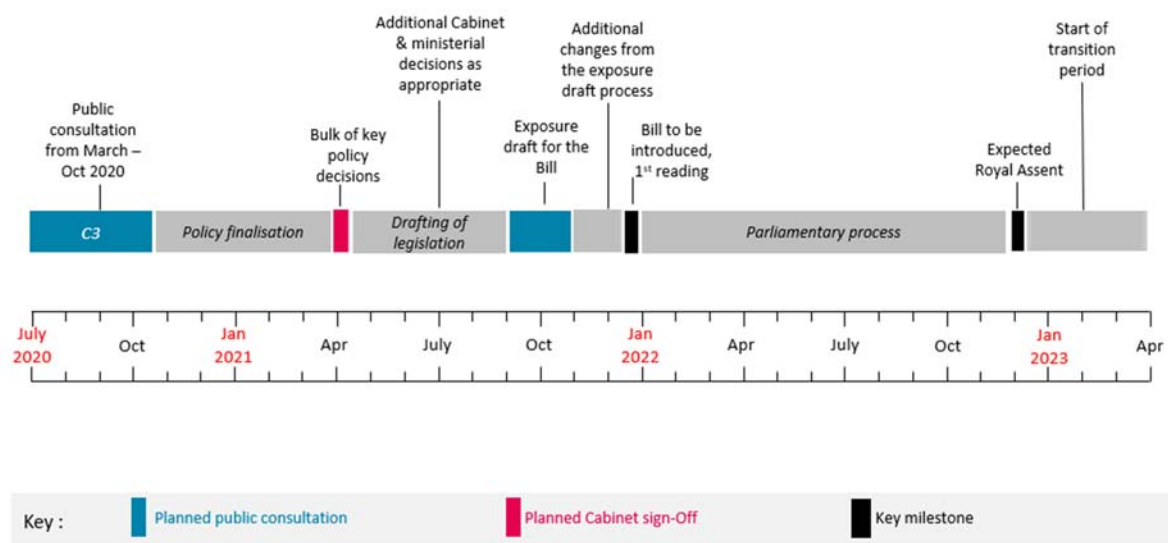
- Purposes and principles – although some submitters were supportive, many suggested that concepts of efficiency and the overarching statutory purpose need more prominence.
- Macro-prudential standards – several submitters suggested the decision-making framework for lending standards should better reflect the overarching purpose of promoting prosperity and well-being of New Zealanders.
- Clarity and coherency – a few submitters emphasised the need for a clear and coherent framework across all parts of the new prudential framework, particularly for the liability, director accountability and crisis management frameworks.
- Deposit Insurance – some submitters expressed concern that the in-principle decision to set the coverage limit at \$50,000 limit is too low, supporting a higher coverage limit. While submitters supported *ex ante* levies and differential pricing, there were opposing views within industry on how differential pricing should be implemented.

## What happens next

This feedback from stakeholders will be used by the Treasury and the Reserve Bank (as the agencies jointly leading the Review) in providing advice to the Minister of Finance on decisions to progress to Cabinet.

We currently anticipate providing the Minister of Finance advice in the first half of 2021, which he can then table to Cabinet. An exposure draft of a Deposit Takers Bill is expected to be provided to the public for comment in the second half of 2021.

An indicative timeline is provided below:



## Where to find more information

A series of papers and information related to the Review can be found on the Treasury [website](#). This information includes the individual submissions underpinning this summary (subject to some redactions made at the request of submitters).

# Summary of submissions on Consultation Document 3

This section summarises the submissions received on Consultation Document 3 according to the topics consulted on. These topics are:

Chapter 2. Purposes of the Deposit Takers Act

Chapter 3. The regulatory perimeter

Chapter 4. Standards and licensing

Chapter 5. Liability and accountability

Chapter 6. Supervision and enforcement powers

Chapter 7. Resolution and crisis management

Chapter 8. Depositor protection

## Chapter 2. Purposes of the Deposit Takers Act

Chapter 2 of C3 concerned the remaining issues following on from the in-principle Cabinet decision that the Reserve Bank will have a primary financial policy objective of “protecting and promoting the stability of New Zealand’s financial system”. This primary objective will be located in the new Reserve Bank of New Zealand Act, but articulated more concretely in the DTA with respect to the regulatory framework for deposit takers. More generally, the financial stability objective is to be interpreted in light of the Reserve Bank Act’s overarching statutory purpose to “promote the prosperity and well-being of New Zealanders and contribute to a productive economy”.

Broadly, the relevant questions sought stakeholder opinions on the specific purposes and decision-making principles of the DTA proposed in C3. There was strong interest in this chapter, with 21 submissions received that related to this topic. Common themes from these submitters include:

- just under half expressed broad support for the proposed purposes and principles
- the most common reason for not providing broad support was concern that efficiency and its related concepts (including economic growth, competition and market diversity, and allocative efficiency) would not have sufficient prominence within the proposed legislative structure
- some concerns that the overarching statutory well-being purpose was inadequately integrated into the DTA’s legislative framework
- some concerns that the proposals would further hinder access to funding for alternative housing projects
- some support for the net benefits (benefits minus costs) decision-making principle, although concerns around the framing of the principle.

### The purpose of the Deposit Takers Act

Fourteen submissions were made on the proposed purposes of the DTA with several submitters providing detailed comments.

A key theme was the role of efficiency in the purpose structure with the majority of submitters expressing concerns. The concerns were tied to the apparent absence of a primary focus on the effective functioning and efficiency of the financial system itself. Some submitters expressed this as disagreement with Cabinet’s in-principle decision to remove efficiency as a primary financial policy objective for the Reserve Bank. Submissions from the large banks suggested that efficiency should be incorporated into the DTA’s purposes, with a submitter suggested wording of “promote the maintenance of an efficient financial system” (or in adding it to the net benefits principle).

### Additional purposes

Some submitters proposed a number of additional concepts to be incorporated into the purpose provisions.

The most common of these, contained in three submissions, was that the purposes should go further and require the Reserve Bank to promote access to, and the growth of, a diverse and innovative financial system.

Other purposes raised in submissions, many overlapping, included:

- to promote and stimulate the growth of the New Zealand economy
- to promote competition and diversity in the lending and deposit taking sectors in order to stimulate economic growth
- expansion of the purpose of mitigating risks from the financial system to make it clear it also encompasses risks to the financial system
- protection of depositors.

## Decision-making principles

Nine submitters expressed broad support for the decision-making principles, notwithstanding suggestions for improving or adding to the principles or improving the hierarchy of objectives and purposes as a whole. There was some support for the net benefits test, proportionality and competitiveness decision-making principles.

However, there were opposing views on the decision-making principles, with some submitters arguing there were a mix of potentially competing and unclear principles that do not adequately substitute an efficiency objective. Some submitters (including Business New Zealand) also argued that it is unclear how they would be balanced.

### Competition and proportionality

An individual submitter suggested the competitiveness principle should be clear that the Reserve Bank has a role in considering competition, but not in promoting or increasing competition. This is in contrast to some submitters whom, as previously mentioned, proposed that competition be incorporated into the purposes of the DTA. Submissions from small deposit takers also suggested that supporting an inclusive and diverse financial system should be a principle.

Another individual submitter proposed that proportionality should be broadened to ensure that there was a level and fair playing field for all participants in the financial system, regardless of their systematic importance.

### Housing

There were a few submitters who argued that the decision-making principles should also include factors such as housing affordability, innovation in housing, and the well-being of communities. An individual submitter proposed that a housing related principle should guide the allocation of credit to ensure that it serves the economy's need for productive investment and the wider social need for access to affordable housing.

### Other additional principals

Several submitters raised a number of other additional principles. Three submitters (including the NZBA) suggested the net benefits principle should be re-worded to the effect of "promoting efficiency, including through the desirability of minimising necessary costs". While long term risks had some support, one submitter (from the finance company sector) suggested that the Reserve Bank should consider concentration and systemic risk to the financial system as a principle.

## Chapter 3. The regulatory perimeter

Chapter three of C3 concerned the regulatory perimeter of the DTA, and sought feedback on the regulatory scope of the legislation and the way it treats different entity categories. Feedback was specifically requested on how current non-bank deposit takers (NBDTs), such as finance companies and other small deposit takers, should be treated under the new regime. The chapter also sought feedback on the proposed mechanisms for maintaining the flexibility of the regulatory perimeter, including on the scope of the Reserve Bank's designation and exemption powers.

Eighteen submissions were received that related to this topic. Common themes from these submitters include:

- support for the overall approach to the regulatory perimeter, including the adoption of a perimeter based on the activity of borrowing and lending
- general support for a single, flexible regime for deposit takers, although a few submitters advocated for establishing tiers of deposit takers in legislation
- some concern about the prospect of capturing certain wholesale funded lenders within the perimeter
- opposing views on the question of whether a separate licence category should be established for lenders that solely want to issue uninsured retail debt securities
- support for the Reserve Bank having a role to monitor an 'outer perimeter' of non-deposit taking lenders, and providing flexibility through designation and exemption powers.

### Defining the overall regulatory perimeter

All submitters who addressed the question supported the proposed approach to defining the overall regulatory perimeter, including the adoption of a perimeter based on the activity of 'borrowing and lending' and the proposed definitions of each.

All submitters who addressed the question supported having an exclusion for at least some wholesale-funded lenders.

Submitters differed on whether the DTA should provide for a maximum size threshold for the wholesale exclusion. Three individual submitters supported a size threshold but differed as to the level of such a threshold, while four submitters (including the Australian Securitisation Forum and Financial Services Federation (FSF)) opposed a maximum size threshold.

Submitters in favour of a threshold noted that large wholesale funded lenders can present stability risks and should be subject to Reserve Bank monitoring. Submitters opposed to a threshold argued that the sector does not present any financial stability risk at present and that a size threshold would be too crude a metric to address future risks. They also noted that the proposed 'outer perimeter' would provide the Reserve Bank with broad monitoring, and potentially macro-prudential powers in relation to wholesale funded lenders.

Submitters generally supported the proposed territorial scope of the legislation, although two individual submitters suggested that the regime should also capture entities that raise funds offshore.

Most submitters had no comment on the application of the DTA to associated persons. The two submitters who did comment, supported an approach aligned with the Insurance (Prudential Supervision) Act (IPSA) although some noted that the application of Reserve Bank powers to associated persons should be carefully considered, particularly where this could affect property rights.

Two submitters suggested that the DTA should restrict the ability of overseas deposit takers (who do not take deposits in New Zealand) to open New Zealand offices for the purposes of representing themselves as New Zealand-regulated.

### **Restricted words**

All submitters who addressed the question were supportive of restricting the use of the words 'bank', 'banker' and 'banking' to licensed deposit takers although there were differing views on whether *all* licensed deposit takers should be able to use these words.

Submitters were generally in favour of restricting the use of the words 'deposit' and 'deposit taker', other than one individual submitter who argued that restricting the ability to describe a product as a deposit would be excessive.

### **Foreign branches**

Submitters who addressed the question were generally supportive of the proposed approach to foreign branches. One submitter questioned why bank branches should have more 'light handed' regulation and noted challenges creating a level playing field between wholesale funded bank branches and non-bank wholesale-funded lenders. Another individual submitter suggested that bank branches should not be deposit funded unless they are small, have a reputable home regulator and do not have a subsidiary in New Zealand or home country depositor preference.

## **Regulation of finance companies that do not take insured deposits**

Submitters had a range of views on the best approach to finance companies. There were two options provided within C3. Option 1 proposed the establishment of a restricted license category for lenders that solely want to issue uninsured debt securities but not take insured deposits or offer transactional facilities. Option 2 on the other hand, would require finance companies to be licensed as deposit takers to issue any type of retail product, both insured and uninsured.

Some submitters (including Trustee Corporations Association of NZ (TCA)) were in favour of Option 1, on the basis that it would enable a more proportionate regulatory approach for finance companies with lower compliance costs and avoid the moral hazard risks associated with an influx of insured deposits into the finance company sector. Some submitters also noted that this would allow for finance companies to be treated differently to deposit takers under the FMCA. TCA also argued that under Option 1 finance companies should continue to be supervised by licensed supervisors (i.e. trustees).

Other submitters (including representatives of the finance company sector) were supportive of Option 2. These submissions generally favoured this option in order to provide consistency of treatment and to allow finance companies to effectively compete with banks and other deposit takers, including by having deposit insurance. These submissions argued that moral hazard concerns associated with finance companies were overstated and that any risks could be managed with similar regulatory requirements that exist at present.

The finance company sector's submission raised concern that the establishment of a separate licence category could exacerbate a public perception that finance companies are high-risk and that without deposit insurance finance companies would become wholesale funded, creating new financial stability risks. They were, however, in favour of limiting new entrants to the market to a 'restricted deposit taker' licence, without access to deposit insurance, for a period of up to 3 years.

One individual submitter did not favour either option and argued that finance companies should have the option of obtaining a licence under the FMCA if they solely want to issue uninsured debenture products.

## Small deposit takers

Most submitters (including several individuals and credit unions and building societies (CUBS)) supported the inclusion of small deposit takers within a single flexible regime. A number of submitters argued that proportionality in the setting and application of prudential standards would be essential and suggested the Government and Reserve Bank should be encouraging greater diversification and competition in the financial sector.

Other submitters (including the small banks) suggested that different tiers of deposit takers should be provided for in legislation (e.g. systemically significant bank, bank, small deposit taker, restricted deposit taker), on the basis that this would provide clarity and consistency over time and that entities could be provided time to transition from one tier to another.

The CUBS submission suggested that prudential regulation should explicitly recognise the broader economic role of mutual structures and that the DTA should provide an additional principle to support an inclusive and diverse financial system.

Several submitters (including Financial Services Federation (FSF), CUBS, the finance company sector) argued that any deposit taker should be able to use the word bank in order to provide a level playing field. Other submitters (including the banks and a number of individuals) argued that the use of the word bank should be restricted to a subset of deposit takers, on the basis of clear criteria, with suggestions including capital levels, product offerings and credit ratings.

Most submitters who addressed the question (including CUBS) supported all deposit takers having the same exclusions from the FMCA as currently apply to banks.

A submitter (TCA) suggested Licensed Supervisors are still best placed to supervise small deposit takers (i.e. current NBDTs) compared to the Reserve Bank who are better placed monitoring larger financial institutions.

## Perimeter flexibility

All 11 submitters who addressed the question were supportive of the Reserve Bank's role in monitoring an outer perimeter of lenders for regulatory arbitrage, financial stability risks and breaches of its legislation.

These submitters also supported the Reserve Bank being able to designate entities as deposit takers on the basis of the economic substance of their activities, although one submitter (from the finance company sector) argued that the Reserve Bank should be obliged to do so, rather than simply empowered.

Submitters were also generally supportive of the Reserve Bank's proposed exemption power, although there were a range of views on the factors that the Reserve Bank should take into account in making an exemption, and some submitters argued that exemption applications should be publicly notified for comment.

## Chapter 4. Standards and licensing

Chapter 4 of C3 sought feedback on the proposed licensing framework, including:

- the matters to which standards could relate
- to whom standards could apply
- how standards could be flexibly applied to accommodate different business models
- the procedural requirements that would apply to the use of the standard-setting power.

This flowed from Cabinet’s in-principle decision that “standards” would be the core prudential rule-making instrument under the Deposit Takers Act.

Standards was a focus for many submitters, with a particular emphasis on macro-prudential policies (lending standards). There were 23 submissions that related to the topics within the chapter. Common themes from these submitters include:

- broad support for the proposed standards and licensing framework
- broad support for the Reserve Bank being able to apply different standards to different classes of entities and using supervisory discretion for individual institutions
- support for the use of the decision-making principles when setting lending standards, although as mentioned in chapter 2, there was concern that an overall wellbeing purpose was insufficiently emphasised
- some support for lending standards being applied proportionately to maintain competitiveness in the lending sector
- opposing views as to the coverage of macro-prudential lending standards
- support for a clear licensing framework for deposit takers, including the right of appeal.

### Scope of standards

The majority of submissions supported the proposed scope of standards in the consultation document. The proposed approach would cover the range of matters currently provided for via Conditions of Registrations, but with clarity and specificity where required.

One submitter (New Zealand Bankers’ Association (NZBA)) was concerned the Minister of Finance’s regulation power to expand the scope of standards was not connected to the Deposit Takers Act’s overarching objective. The submitter also noted standards should consider home-host arrangements and ensure consistency with prudential standards in the home jurisdictions of foreign-owned institutions.

Several housing groups noted the impact of the Reserve Bank’s current prudential capital requirements on shared ownership and private housing cooperatives, which are treated as commercial property lending. As a result, the current regime has had unintended negative consequences for alternative housing tenure innovation. Some of these submitters raised concerns that failing to have an overarching wellbeing decision-making principle (and removing an efficiency objective) would result in no change.

An industry stakeholder noted that changes to related-party lending should be written clearly and not create unintended consequences.

## Macro-prudential policy

The majority of submitters supported the proposal that the Reserve Bank should have the power to set lending standards (such as Loan to Value Ratio (LVR) and Debt to Income Ratio (DTI)) in relation to mortgages. However, some lenders argued they should not apply to all institutions. Several submitters noted lending standards should have a neutral impact on competition.

The application and scope of lending standards was commented on by several submitters.

A number of financial industry group bodies (the Financial Services Federation (FSF) and CUBS) did not agree with setting lending standards for non-bank lenders (NBDTs and Non deposit taking lenders (NDTLs)), concerned that they are a small part of the market and including them would inhibit competition by curtailing options and the points of difference they provide.

A couple of individual submitters commented that lending standards should not be restricted to property lending, whereas bank submitters were more cautious about problems with expanding lending standards to commercial or rural property loans.

One individual submitter agreed there are material distributional impacts from lending standards and proposed that the Reserve Bank should work in co-ordination with fiscal and wellbeing strategies. The submitter raised concerns that an over-reliance on monetary policy to stimulate the economy has led to asset (especially house) price inflation. Another individual submitter noted lending standards should allow for other serviceability instruments, and not be limited to LVR and DTI restrictions.

## Flexibility of standards

Submitters generally agreed with the Reserve Bank having the ability to calibrate standards for different classes of entities and having the ability to impose supervisory adjustments for individual institutions.

Several industry stakeholders thought standards should be proportionate and risk based, according to the characteristics of each class of deposit taker. On similar lines, one individual submitter raised the need for the Reserve Bank to understand that there are alternative business models and corporate forms that should not be precluded from operating because they have not been supervised by the Reserve Bank in the past.

Submissions from non-bank stakeholders noted they should have access to Reserve Bank liquidity facilities when they are in the same prudential regime as banks.

A couple of submitters noted institutions should be allowed to submit responses to supervisory adjustments and the Reserve Bank should be required to address the responses before making a final decision.

Several submitters raised concerns about the appeals process for standards. One professional services firm noted appeals against Reserve Bank decisions on supervisory adjustment through judicial review could create a difficult supervisory relationship and suggested having a forum for oversight or mediation to allow appeals without requiring a full judicial review. An individual submitter strongly objected to limiting appeals to judicial review only.

A couple of submitters supported having standards for non-deposit takers. One of these suggested the Reserve Bank's reporting standards could be limited to NDTL with assets over a threshold of \$30 million would be appropriate. However, a group body (the Australian Securitisation Forum) noted that there are already constraints on the lending criteria for non-deposit takers via credit ratings and investor requirements, and tighter restrictions may result in some borrowers losing access to credit.

A professional services firm argued that lending and reporting standards for wholesale funded entities would be best done on a call-in basis, as in Australia.

## Procedural requirements for standards

Submitters broadly supported the proposed the ability for Parliament's Regulation Review Committee to review the Reserve Bank's standards. Other procedural points raised were:

- Several submitters, including the NZBA, noted that Regulatory Impact Statements should be part of the consultation process.
- An individual submitter noted the requirement to consult the government and government agencies in developing standards should be no stronger than the requirement to consult publicly and should be limited to issues of substance on the standard rather than the actual setting.
- There was some concern that the overly technical presentation of material created a barrier for public consultation. A financial industry group body (Institute of Finance Professionals New Zealand (INFINZ)) noted that thought should be given to new approaches to get input from non-financial businesses, customers and other stakeholders.

## Licensing

Submissions generally supported the proposed licensing approach for deposit takers.

Several submitters emphasised the importance of clear and transparent processes and criteria for licensing and de-licensing decisions. A couple of individual submitters noted the importance of appeal rights for aspects of licensing decisions where interpretation is required.

One group body (FSF) preferred to have licensing requirements only for deposit taking entities within the regulatory perimeter, and not for finance companies in order to avoid confusion. The submitter also expressed concern about the number of licenses needed by entities and questioned why conduct licenses could not be part of deposit takers' licenses.

Another group body (Institute of Directors) suggested its designation of Chartered Membership as an effective way to support any "fit and proper" requirements for directors of regulated entities.

An individual submitter noted that the High Court may not have sufficient expertise for hearing appeals beyond a judicial review.

## Transparency requirements

Submitters generally supported having a register of standards and license conditions. An industry stakeholder said the register should not include notices of non-objection, which may contain commercially sensitive information.

## Chapter 5. Liability and accountability

Chapter 5 of C3 sought feedback on the design of an improved accountability framework for directors in the new Deposit Takers Act (DTA). The chapter also focused on a number of high-level issues yet to be resolved following the first two rounds of consultation. They include:

- the appropriate balance between civil and criminal penalties
- the role of ‘deemed liability’ for directors
- a tiered structure for penalties.

There were 18 submissions received that related to the topics within the chapter. Common themes from these submitters include:

- broad support for adopting a regime with pecuniary and civil, rather than criminal penalties
- some concern that the director duties did not provide enough clarity and were not consistent with other obligations on directors
- some concern with the proposed approach to insurance, suggesting directors should be able to insure themselves against potential penalties for breaches of director duties
- support for the proposal that penalties should be broadly consistent with similar legislation in New Zealand.

### Civil and criminal liability

Seventeen submitters addressed the proposed approach for civil and criminal liability. There was broad support for the proposal that the regime should be aligned more closely with other regimes, and have a greater focus on civil pecuniary penalties, rather than criminal offences.

One individual submitter noted that supervision of New Zealand’s “twin peaks” (conduct and prudential) should be as consistent as possible. Large bank submissions (including the NZBA) also focused on alignment with the Financial Markets Conduct Act. While submissions from small banks supported the large banks submission, some of these submitters made the point that the defences in the FMCA should also be available.

Some submitters (including the Institute of Directors) stressed that criminal sanctions should only apply where there is an intentional or reckless element to the offence.

The finance company sector submission, and the CUBS submission, noted that the current non-bank deposit taker requirements are significantly more onerous than the current or proposed regimes for bank directors and welcomed a review of these requirements.

One submission raised concern with the proposed approach, supporting the retention of criminal penalties for contraventions. The submission was also concerned that the Reserve Bank, as regulator, was too close to the industry and instead supported a separate agency being responsible for prosecutions.

Several submitters thought a problem could arise where Reserve Bank issued directions that could require directors to breach company duties under the Companies Act, proposing that there should be as specific safe-harbour provision.

## Director accountability

There were opposing views on the proposal to introduce a positive director accountability regime, with duties on directors supported by offences.

Submitters (including individual submitters and the FSF), supported the imposition of positive duties on directors as a means to hold them accountable. However, other submissions preferred a more robust formulation of these duties, to require more from directors.

Other submitters (including Institute of Directors, INFINZ and the large Banks) expressed concern about the proposed approach. The two key concerns were that:

- duties needed to be sufficiently clear and that directors are able to focus on performing their duties
- the interaction with Companies Act duties, and the duties in other regimes, be rational and clear.

The Institute of Directors was concerned about the impact that these duties would have on the ability of deposit takers to attract qualified applicants.

The submissions from the Institute of Directors, the Banks and other deposit takers opposed the proposed approach to barring directors obtaining insurance which would cover a penalty of breach of duty. Other submitters provided general support for the proposal.

ICNZ noted that the provision of Directors and Officers (D&O) insurance was expected to tighten over the medium term.

## Deemed director liability

Submitters who commented on deemed liability for false or misleading disclosure generally supported a move towards the FMCA regime. The Institute of Directors thought that the proposed positive duties would make deemed liability for disclosure redundant.

There was some support from submitters to shift away from the existing attestation regime. An individual submitter described it as 'unsatisfactory' with insufficient guidance. Banks (NZBA) raised concerns that the current regime was outdated and out of step with international regimes, significantly increasing compliance costs, and focusing on "point in time" accountability.

## Penalties

The few submissions on this topic broadly supported the approach to penalties, which was to adopt a maximum civil pecuniary penalty for body corporates based on the highest of:

- a specified dollar amount
- a percentage of the size of the institution, or
- a multiple of any gain or loss avoided.

Submissions were supportive of the shift in emphasis away from criminal offences. However, one submitter felt that there should be harsher penalties, and they should be more readily and more independently enforced.

## Chapter 6: Supervision and enforcement powers

Chapter 6 of C3 followed on from the decisions made after Consultation Document 2B. A key in-principle decision at that point was that the Reserve Bank would be empowered to undertake on-site inspections as part of its supervisory activities and that the Reserve Bank's enforcement framework could be improved by expanding the formal toolkit to include other tools such as statutory public notices, enforceable undertakings, infringement notices and civil penalties.

Chapter 6 sought feedback on which tools should be added to this expanded toolkit and the safeguards that are needed.

Fourteen submissions were received that related to the topics within the chapter. Common themes from these submitters include:

- broad support for additional safeguards for the on-site power, including limiting the use of on-site inspections without notice
- broad concern about the idea of expanding Financial Markets Authority's (FMA) on-site inspection power
- opposing views on the location of the on-site powers and other supervisory powers
- broad support for widening the Reserve Banks enforcement toolkit, including enforceable undertakings, statutory public notices, infringement notices and remedial and action plans.

### On-site inspections

There was unanimous support for the introduction of additional safeguards for the on-site power by the eight submitters who expressed views on this topic. The majority of submitters specifically mentioned that the use of on-site inspections without notice should be limited (if such a power was needed at all). Submitters mentioned various additional potential safeguards as well as the three included in the consultation document (which were reasonable time, approved inspectors, and confidentiality protections), including:

- only used where other supervisory tools are insufficient
- a court-order warrant
- privacy and anonymization safeguards
- indemnity for Health and Safety breaches
- publishing of annual statistics
- reviews undertaken by an independent party
- strict requirements on the use and sharing of the information.

Submitters also raised a desire for clear guidance by the Reserve Bank clarifying in what circumstances this power would be used.

The seven submitters that directly commented on whether the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT) was an appropriate comparator for a similar on-

site power for the Reserve Bank had opposing views. However, of the submitters that did not agree (including the Insurance Council of New Zealand (ICNZ) and Financial Services Council (FSC)) the majority raised concerns that the objectives of the two regimes were fundamentally different. Commenting that the AML/CFT is designed to detect and deter criminal activities, while the DTA's supervisory tools seek to achieve financial stability through prudential standards. The NZBA was one submitter who broadly agreed but noted there should be recognition of several differences to the scope and intention of the regimes, particularly where it comes to inspection without notice.

Similarly, there was not a clear consensus from submitters on the appropriate legislative location of an on-site inspection power. A slight majority preferred the power to be in the DTA. The ICNZ and the NZBA believed a specified power in the DTA was preferable, while the FSF commented that it would be more efficient and elegant to include within the Institutional Act (IA).

One submitter (the ICNZ) noted that the in-principle decision to empower the Reserve Bank to undertake on-site inspections was for deposit takers rather than all regulated firms.

The majority of submitters (including the NZBA and ICNZ) did not support expanding the FMA's on-site inspection power in the same way that is proposed for the Reserve Bank.

Submitters queried whether C3 was an appropriate mechanism to review the FMA's inspection power and receive adequate public engagement on the proposal. Submitters also questioned the need to expand the powers as they were unaware of concerns that would warrant the expanded power. One submitter supported the proposal, as it would provide the FMA with a formal power to access premises and documentation, instead of relying upon firms voluntarily providing information.

Only four submitters specifically commented on the application of expanded FMA on-site inspection powers. Two submissions (including the FSF) preferred that the inspection power apply in all circumstances to all entities, subject to safeguards. ICNZ raised concerns that the power would undermine the working relationships between regulators and entities.

## Other supervisory powers

Seven submitters commented on the appropriate legislative location of supervisory powers and whether there was merit in consolidating similar powers. There was no consensus of views, with some submitters that supported consolidation within the Institutional Act, commenting on the benefits of locating supervisory powers in a single place. Other submitters (including the ICNZ) supported inclusion in the DTA, and some commented that including the powers within the sectoral Acts allows the powers to be tailored as appropriate and reflect the DTA's framework and objectives.

## Breach reporting

The majority of submitters supported inclusion of breach-reporting obligations in legislation. Many submitters commented on the need for further clarity as to how breach reporting would apply and on the need for materiality thresholds and for resulting liability to be civil (not criminal). Submitters (including the NZBA) referenced the FMCA, and commented that this could provide a basis for the approach.

The majority of submitters who supported inclusion into legislation preferred inclusion into the DTA over the IA.

## Enforcement powers

There was unanimous support for the DTA to provide for the Reserve Bank the ability to accept a voluntary undertaking from a deposit taker that is enforceable. There was broad support that this tool was useful to have. The NZBA requested clarity as to liability if an entity did not comply with an enforceable undertaking.

## Other tools

There were opposing views on whether the DTA should provide a statutory basis for issuing formal notices. The individuals and small deposit takers that agreed that the Act should provide a statutory basis commonly referenced the need to standardise the approach to notices and create clarity. Submitters (including FSF and NZBA) that did not support the proposal commented that there was no clear need to legislate for it.

The two submitters (FSF, NZBA) that directly commented on the role for infringement notices supported the proposal and commented that notices can be an effective tool. The NZBA did request further clarity as to the scope of any infringement notice tool and the scale of potential penalties.

There was support for remedial notices and action plans from the four submitters who commented on this area. These submitters saw a useful role for these tools within the enforcement toolkit.

## Chapter 7: Crisis management and resolution

Chapter 7 of C3 concerned a selected number of remaining issues following on from the in-principle Cabinet decisions on crisis management and resolution. Those in-principle decisions included that the Reserve Bank will be the resolution authority, with clear objectives and functions, and that there will be wider resolution powers than currently available.

The relevant questions sought stakeholder opinions on:

- conditions for placing a deposit taker into resolution
- liabilities that would be subject to bail-in
- the potential role of a statutory management advisory committee
- resolving credit unions and building societies
- whether deposit takers should remain subject to statutory management under the Corporations (Investigation and Management) Act 1989 (CIMA).

Thirteen submissions were received that related to this topic. Common themes from these submitters include:

- broad support for the overall direction of travel
- support for simplicity and clarity within the regime, partly so it can be explained to depositors and investors easily
- support for alignment with international practice in general and the Financial Stability Board's Key Attributes of Effective Regimes for Financial Institutions in particular
- support for crisis management reforms in New Zealand being aligned with international norms, which will assist international investors in understanding the regime.

### Conditions for placing a deposit taker into resolution

There was broad support for the proposed approach to defining the conditions for placing a deposit taker into resolution. Several submitters agreed that greater specification would be required. The consultation document noted that greater specification could be required through the Reserve Bank being required to publish a 'statement of approach' that specified conditions to a greater extent. Two submitters acknowledged the role that such guidance could play in mitigating their concerns.

Two submissions favoured purely financial indicator triggers (e.g. capital levels) for the objectivity and transparency that they offered. One submitter was concerned that a failure to meet a non-financial licensing requirement was too broad a trigger and that licensing issues should be addressed with non-resolution tools.

## **Liabilities that would be subject to statutory bail-in**

Of the submissions that commented on the scope of statutory bail-in, almost all favoured taking the broader, negative list approach. Only one preferred the narrower, positive list approach. Simplicity was a key factor in views expressed, although there were opposing views as to which approach was simpler. For some submitters, what mattered more was having clarity in the result rather than how one got there. Banks (including the NZBA) were concerned that the approach to bail-in should align with international practice.

There were opposing views on whether uninsured deposits should be included within the scope of bail-in. Two submissions thought deposits should be excluded from bail-in. Two submitters thought that deposits should be included in bail-in provided that deposits were made higher in the bail-in hierarchy (e.g. via deposit preference). Only one submitter thought deposits should be included in bail-in without qualification.

Almost all submissions that commented on crisis management opposed statutory bail-in being applicable to pre-existing liabilities (e.g. bonds already issued at the time the powers are legislated for). A key concern was that investors should be able to price the risk of bail-in into their decision-making at the time of making their investments.

## **The statutory management advisory committee**

Six submissions commented on the statutory management advisory committee. Only two supported its retention. Some of the others noted that the Reserve Bank can always appoint its own committee if it needs additional advice. One submission from the bank sector noted that while the statutory management advisory committee is no longer required, other advisory committees may be necessary to support the Reserve Bank in its role as resolution authority.

## **Resolving credit unions and building societies**

Of the five submissions that commented on a demutualisation power for the Reserve Bank, three were clearly in support. The other two submissions noted that credit union and building society losses could be absorbed by other means. It is notable that building societies and credit unions themselves were among those that supported a demutualisation power.

## **The application of deposit takers of CIMA statutory management**

Support for removing deposit takers from the scope of statutory management under CIMA was almost unanimous. Only one of the eleven submitters who commented on this question preferred the status quo for the additional optionality that it provided to authorities. One other saw no harm in the status quo but was also comfortable with moving to a single regime. All others who commented on this question favoured moving to a single regime administered by the Reserve Bank.

Key concerns that came through in support of a single regime included that CIMA lacked the tools required for the effective resolution of financial institutions, did not align with international best practice, conflicted with the Reserve Bank being the designated resolution authority, and is not well understood internationally.

Submissions from Banks (including the NZBA) in particular were concerned about the legal uncertainty for investors of having two regimes, and the need to explain this anomalous arrangement to international investors. Submitters also noted the unsuitability of CIMA statutory management for resolving a financial institution.

One professional services firm considered it inconceivable that, regardless of any theoretical gap that removal from CIMA statutory management might create, there could be a situation where the absence of the CIMA statutory management option for deposit takers would leave authorities without the necessary tools to act in the public interest.

## **Other matters**

C3 noted that the Review was still considering the merits of having ‘protecting insured depositors’ as an additional resolution objective. One submission opposed that idea on the grounds that the resolution authority would already have a multitude of objectives to manage and should not be aiming to be a champion of any particular credit group.

## Chapter 8: Depositor Protection

Chapter 8 of C3 concerned depositor protection. Cabinet has agreed in-principle to introduce a deposit insurance scheme in New Zealand. Cabinet has also agreed in-principle that the scheme will: aim to protect depositors and thereby contribute to financial stability; cover deposits up to a total of \$50,000 on a per depositor, per institution basis; be fully funded by levies on deposit takers with a Government funding backstop; and be compulsory for licensed deposit takers.

Feedback was sought on more detailed elements of depositor protection that follow from the above in-principle decisions. In particular, feedback was requested on:

- what products should be covered by the deposit insurance scheme
- how the deposit insurance scheme should be funded
- who should administer the deposit insurance scheme
- what role should the deposit insurer have
- should depositors be preferred to other creditors in a resolution.

Fourteen submissions were received that related to this topic. Common themes from these submitters include:

- support for a higher coverage limit than the current \$50,000 limit agreed in principle by Cabinet
- opposing views on whether depositors should be preferred to other creditors in a resolution
- some concern on risk-based levies within the deposit taking sector, with support for further consultation on the levies
- broad support for the remaining deposit insurance proposals.

### Depositor preference

Thirteen submissions were received on this topic. Banks (including the NZBA) do not support the introduction of a depositor preference. Banks are concerned that depositor preference would have flow-on impacts on their funding costs, create complexities by adding a new class of creditors in the creditor hierarchy, and would potentially fundamentally challenge, or significantly alter, the funding profiles of some deposit-taking entities.

Banks also stressed that higher capital requirements provide protection to depositors, and accordingly reduce the additional benefit of introducing a depositor preference. Banks noted that if a depositor preference is to be introduced, its scope should be limited to insured deposits.

On the other hand, several submissions from individuals strongly supported the introduction of a depositor preference. These submissions advocated for introducing a preference for all deposits on the basis that this would support confidence in the safety of deposits (reducing the likelihood of a run by uninsured depositors on a deposit taker), enhance the credibility of the resolution regime (by reducing the scale of losses depositors would face, as opposed to more sophisticated wholesale investors), and enhance market discipline by shifting risk onto creditors who are better able to monitor the risks of the deposit taker. These submitters also noted that any cost impact of a depositor preference is likely to be small given the impending increase in capital requirements.

Submitters from the non-bank deposit taker (NBDT) sector noted that, under current legal requirements, their depositors are already given priority over other creditors in the event of liquidation. They suggested that their customers should be no worse off as a result of the decisions made in the Phase 2 review.

### Scope of coverage

Ten submissions were received on this topic. Several submissions from individuals and the credit union and building society (CUBS) sector argued that the current proposal that wholesale deposits would be in scope of the deposit insurance scheme unnecessarily increases the exposure of the scheme and is inconsistent with the rationale for depositor protection as these more sophisticated depositors are well placed to monitor the risk of their bank. In contrast, banks agreed with the proposal on the basis that it would be complex to exclude them, and that this complexity would substantially outweigh any benefit.

There was a range of feedback on the proposal for excluded deposits (related party, inter-bank and foreign currency deposits). Banks argued that related party deposits should not be excluded as regulations already require offerings to related parties are no more favourable than those offered to other customers. Banks also noted that some small-to-medium sized exporters (that are likely to be less sophisticated) make use of foreign currency deposits for day-to-day business. Submissions from individuals suggested that all deposits from financial institutions should be excluded, and that the rules for the scheme should limit the ability for depositors to increase coverage through arranging their affairs through trusts.

Several responders to the retail depositor survey supported the proposed approach of excluding higher risk and higher return products from the scope of the deposit insurance scheme. Finance companies did not support the exclusion of their products from the deposit insurance scheme, on the basis that their products are similar to term deposits and that they will subject to the same regulatory regime as banks. One responder raised concerns about the ability of retail investors to distinguish between insured and uninsured products, while another suggested that the scheme should focus on covering products that can directly interact with the payments system.

### Mandate, powers and additional objectives

Seven submissions were received on this topic. Submitters supported proposals that the deposit insurer should not replicate the supervision and resolution functions of the Reserve Bank, should be located within the Reserve Bank, and should be allowed to contribute to the cost of resolutions. Some submitters suggested that a stand-alone entity should be considered if the scheme becomes more complex, and that the deposit insurer's mandate should have a greater focus on pricing the insurance correctly. Banks emphasised the importance of deposit insurance and resolution functions being co-ordinated.

Submitters supported that there should be a legislated requirement to review the deposit insurance scheme. There are opposing views on whether a five or ten-year timeframe would be appropriate. Submitters supported the coverage limit being set in legislation, although some submitters saw the benefit of delegating the decision to the Minister in order to allow the coverage limit to be increased swiftly in response to a crisis. Some submitters were concerned that the Minister deciding levies for the scheme could result in undesirable lobbying from the sector.

## Funding framework

9 submissions were received on this topic. Submitters supported charging levies to deposit takers ahead of any failure(s) occurring. Deposit takers, including banks, stressed that levies should take into account the Reserve Bank's recent decision to increase capital requirements for the banking sector which, all else equal, reduces the likelihood that the scheme is drawn on. The sector stressed that *ex ante* levies have an opportunity cost, in that those funds would otherwise be used to support productive lending or build capital, and that the levies would also need to be set with regard to the capacity of the sector to absorb higher costs at a given time. An individual submitter stressed that the *ex ante* levies, including the amount held in any deposit insurance fund, should be set based on objective criteria and international comparisons.

Submitters provided a range of views on the approach to differential pricing. Banks supported a risk-based approach to setting levies and stressed that further consultation should take place before the levy amounts are determined. Small banks, CUBS and finance companies stressed that the levy setting needed to be proportionate and take into account the potential impact on their ability to compete with large banks; reflect the systemic risk posed by larger banks; and should not rely solely on simple measures such as credit ratings which are distorted by parental or implicit Government guarantees. Submissions from individuals supported differential pricing.

Banks and one individual submitter questioned to what extent deposit takers should pay for the cost of funds provided through the Government backstop, given that the provision of these funds is supporting the public policy objective of protecting depositors. The sector proposed that any charge for the backstop should be on a cost recovery basis, and the Crown should not make a profit from the provision of insurance.

## Coverage limit

6 submissions (including the NZBA, small banks, CUBS, and finance companies) were received on this topic. Submitters commented on the Government's in-principle decision to limit coverage of the scheme to \$50,000, and supported a significantly higher coverage limit. Small banks, CUBS, and finance companies are concerned that they will lose a significant amount of deposits under a \$50,000 limit, which would incentivise their customers to split deposits across multiple institutions. Submissions also noted that the limit is low by international standards, and will not do enough to support public confidence in a crisis. Business NZ questioned whether deposit insurance should be mandatory, and why individual households cannot manage this risk on their own as they do in other spheres.

## Box: Retail depositor survey

As part of the third consultation phase, a survey was run focussing on the components of C3 most of interest to retail depositors. The questions focussed on the calibration of the scope of deposit insurance and the regulatory perimeter, which will involve trade-offs between the level of safety and returns available on financial products.

Responses were received from 23 individuals who were largely older than 40 and had substantial savings held in deposits.

Several submitters provided substantial text responses to the questions. The main theme of the responses related to:

- **Scope of products covered by deposit insurance:** more than 80 percent of respondents agreed that transactional, savings and term deposits should be covered, supported by comments stating that these accounts are widely held and perceived to be protected already, that losses of their value would potentially create hardship, and that the accounts are low risk and therefore less costly to insure. Around 20 percent of respondents thought KiwiSaver funds should be protected.
- **The role of higher risk and return retail products:** of those that answered the question, 60% supported the idea that there should be an option for higher risk and return investments in finance company products, subject to less intensive supervision. Several respondents stressed that this would need to be supported by clear and well regulated messaging to investors. Some respondents were concerned about the potential for finance companies subject to less intensive regulation to do harm to everyday investors.
- **Public awareness of deposit insurance:** respondents supported enhanced disclosure requirements and awareness campaigns when deposit insurance is introduced, stressing that the messaging needed to be simple. There was less support for restricting the use of the word “deposit”, which appeared to reflect that it is a widely used term and it would be harmful to restrict it.

# Appendices

# Appendix 1: Questions for consultation 3

## Chapter 1: Update on Review and proposed path for legislation

No follow-up questions.

## Chapter 2: Purposes of the Deposit Takers Act

2.A Do you agree with the proposed purposes? If not, what changes would you propose to the purposes? Are there any other purposes that we should be considering?

2.B Do you agree with the proposed decision-making principles? If not, what changes would you propose to the principles? Are there other principles that should be considered?

## Chapter 3: Regulatory perimeter

3.A Do you agree with the proposed approach to defining the overall regulatory perimeter? If not, what approach would you suggest?

3.B Do you support the proposed exclusion for wholesale-only funded lenders? If not, what approach would you suggest?

3.C Do you support a maximum size threshold for the wholesale exclusion? If so, what would be an appropriate measure of size?

3.D Do you agree with the proposed territorial scope of the legislation? If not, what approach would you suggest?

3.E Do you have any comments on the application of the Deposit Takers Act to associated persons?

3.F Do you agree with retaining the restriction on the use of the words 'bank', 'banker' and 'banking', but limiting it to persons providing 'financial services'? If not, what approach would you suggest?

3.G Do you agree that the use of the words 'deposit', 'deposit taker' and 'deposit-taking' should be restricted? What restrictions would you suggest?

3.H Do you support the proposed approach to foreign bank branches? If not, what approach would you suggest?

3.I Do you agree that prudential regulation should be retained for finance companies funded via retail debt securities?

3.J Would you support the approach of creating a restricted licence category for finance companies funded via retail debt securities (option 1)? What do you think would be the benefits and costs of this approach?

3.K Under option 1, what restrictions should be placed on the services that a licensed finance company could offer without becoming a full licensed deposit taker?

3.L Should licensed financial market supervisors undertake the frontline supervision of finance companies under this model? If not, what approach would you suggest?

3.M Alternatively, would you support requiring finance companies to have full deposit taking licences to issue retail debt securities (option 2)? What do you think the benefits and costs of this approach would be?

3.N Do you support the proposed approach to small deposit takers, under which the Reserve Bank would be expected to calibrate its regulatory approach in light of the proposed purposes, the decision-making principles, and the contents of the Remit? If not, what changes would you suggest?

3.O Alternatively, would you support creating a separate tier in legislation for small deposit takers? If so, how would you suggest drawing this distinction?

3.P Do you think the use of the words 'bank', 'banker' and 'banking' should be restricted to a subset of deposit takers? If so, what criteria would be appropriate for their use?

3.Q Should current NBDTs have the same supervision, governance and disclosure exemptions from the FMC Act as banks? If not, what approach would you suggest?

3.R Should current NBDTs be subject to a disclosure regime that is similar to that for banks? If not, what approach would you suggest?

3.S Do you support the proposed approach to perimeter monitoring? If not, what approach would you suggest?

3.T Do you support the proposed designation power? If not, what approach would you suggest?

3.U Do you support the proposed exemption power? If not, what changes or alternative approaches would you suggest?

3.V What should the criteria be for the Reserve Bank granting an exemption? What other limitations or safeguards should be placed on the power?

## **Chapter 4: Standards and licensing**

4.A Do you agree that the proposed scope of standards is appropriate? If not, what changes would you suggest?

4.B Do you agree with the proposed power for the Reserve Bank to set lending standards (such as LVRs and DTIs) in relation to mortgages? If not, what changes to the scope or additional safeguards would you suggest?

4.C Do you agree that the Reserve Bank should be able to issue differing standards for different entity classes? If not, what approach would you suggest?

4.D Do you agree that the Reserve Bank should be able to make standards that enable it to exercise supervisory discretion on matters and within ranges specified in the standards? If not, what approach would you suggest?

4.E What procedural requirements and protections should apply to the Reserve Bank's use of supervisory adjustment?

4.F Do you support the proposed approach to allowing the Reserve Bank to set reporting standards and lending standards in relation to categories of non-deposit-taking lenders that have been prescribed via regulations? Why or why not?

4.G Do you agree that the proposed procedural requirements for standards are appropriate? If not, why not? Should any other requirements be considered?

4.H Do you support the proposed licensing test for deposit takers? If not, what approach would you suggest?

4.I Are the proposed procedural requirements for licensing appropriate? If not, why not? Should any other requirements be considered?

4.J What scope of appeal rights should be provided for in relation to licensing decisions and why?

4.K Do you agree with the proposed approach to de-licensing? If not, what changes would you suggest?

4.L Do you agree with the proposed use of the register to record and apply standards and other requirements on deposit takers? If not, what approach would you suggest?

## **Chapter 5: Liability and accountability**

5.A Do you agree with the general categorisation of the contraventions that should give rise to criminal and civil liability in the Deposit Takers Act?

5.B Do you agree with the specification of the new positive duties for directors of deposit takers? If not, why not?

5.C Do you agree that directors should not be indemnified or insured against loss in the performance of their duties?

5.D Do you see any specific issues with the relationship between the existing director duties in the Companies Act, and the new duties being proposed here?

5.E Do you agree that deemed liability should be retained for false and misleading disclosure? If not, what approach would you suggest?

5.F Do you agree with the proposed approach to maximum civil penalties on bodies corporate, including the use of maximum penalties based on the size of the institution or any benefit gained (or loss avoided)? If so, what specific metrics or amounts should be considered for these penalties?

5.G Should a lower tier of civil penalties be established for some contraventions, for example, those that do not adversely affect the deposit taker's prudential standing?

5.H What maximum level of individual civil penalty should be provided for and why?

5.I Should criminal offences relating to the obstruction of routine supervisory powers be subject to monetary penalties, but not imprisonment terms for an individual? If so, what level of maximum penalty would be appropriate and why?

5.J What monetary and imprisonment penalties should be considered for more serious criminal offences and why?

## Chapter 6: Supervision and enforcement powers

- 6.A Do you agree that the on-site power for the AML/CFT regime is an appropriate comparator for a similar power for the Reserve Bank's prudential functions?
- 6.B Should this power be a generic power in the new Institutional Act, or specified in the Deposit Takers Act?
- 6.C Do you think any additional safeguards are necessary for the on-site power?
- 6.D Do you think the FMA's on-site inspection power should be expanded in the same way that is proposed for the Reserve Bank?
- 6.E Should an expanded FMA on-site inspection power apply in all circumstances and to all FMA regulated entities or only some (e.g. in high-risk circumstances or for dual prudential-conduct regulated entities)?
- 6.F Do you have any comment on the appropriate legislative location of supervisory powers such as information gathering and sharing, on-site inspections, and other related powers? Do you see merit in consolidating similar powers from sectoral Acts into the Institutional Act?
- 6.G Should a breach-reporting requirement be directly provided for in legislation? Should this be provided for in the Deposit Takers Act, or located in the Institutional Act as a requirement for all entities regulated by the Reserve Bank?
- 6.H Do you agree that the Deposit Takers Act should provide for the Reserve Bank to accept a voluntary undertaking from a deposit taker that is enforceable in court?
- 6.I Should the Deposit Takers Act provide a statutory basis for the Reserve Bank to issue a formal notice to a deposit taker?
- 6.J Do you see any role for infringement notices in the Deposit Takers Act?
- 6.K Do you see a useful role for remedial notices and/or action plans in the Deposit Takers Act?

## Chapter 7: Resolution and crisis management

- 7.A What are your views on the proposed triggers for placing a deposit taker into resolution and exercising resolution powers?
- 7.B What should be the scope of statutory bail-in in New Zealand? What liabilities should be expressly included or expressly excluded? How should deposits be treated?
- 7.C Should statutory bail-in have retrospective application?
- 7.D Is there still a role for a ministerially-appointed advisory committee to a statutory manager? If so, should legislation be more specific about the purpose and the composition of that committee?
- 7.E Should the Reserve Bank have the power to demutualise a building society or credit union that meets the criteria for being placed into resolution?
- 7.F Do you agree that deposit takers should only be subject to one statutory management and resolution regime?
- 7.G Do you favour option 1, option 2, or some other approach (including the status quo)?

## Chapter 8: Depositor protection

- 8.A What are your views on the benefits and costs of a preference for insured depositors compared to no preference?
- 8.B If a preference for depositors is introduced, do you agree it should only cover insured deposits (not all deposits)?
- 8.C Do you agree with the proposed prescribed product approach for coverage under the new scheme? If not, what approach would you suggest?
- 8.D Do you agree that both retail and wholesale investors in insured deposit products should be covered up to the \$50,000 coverage limit? If not, what approach would you suggest?
- 8.E Is the list of excluded deposit products appropriate? If not, what approach would you suggest?
- 8.F Do you agree with the proposed narrow mandate for the deposit insurer?
- 8.G Do you agree that the deposit insurer should be able to provide funding for resolutions other than a liquidation?
- 8.H If yes, do you agree with the limit on the amount of funds that can be used? What are your views on the appropriate safeguards?
- 8.I What are your views on the appropriate decision authority for the coverage limit?
- 8.J If a deposit insurance fund is established, should changes to the target size and the levies be made by ministers via regulations or by the deposit insurer itself?
- 8.K Should there be a legislated requirement to review the deposit insurance scheme? If so, how often should it be reviewed (e.g., every five years)?
- 8.L Has the Review identified the appropriate criteria for assessing the best organisational form of the insurer?
- 8.M Do you agree that the insurer should be located within the Reserve Bank? If not, what approach would you suggest?
- 8.N Do you agree that the insurer should build a deposit insurance fund ahead of a failure? If not, what approach would you suggest?
- 8.O What are your views on the appropriate size of any deposit insurance fund?
- 8.P Should the insurer charge higher levies to higher risk deposit takers? What are your views on how risk should be assessed?
- 8.Q What are your views on how the Government funding backstop should be designed?

## **Appendix 2: Questions from the retail depositor survey**

### **Question 1: Which products should be covered by the insurance scheme?**

1.A Please provide an explanation of why you would like these products covered.

### **Question 2: Should finance companies be subject to a less intensive set of rules if they choose not to offer insured deposits?**

2.A Please provide an explanation of your preferred approach

### **Question 3: How should public awareness of the deposit insurance scheme be promoted?**

3.A Please provide an explanation of your preferred approach to promoting public awareness

### **Question 4: Should a preference for insured depositors be introduced in New Zealand?**

4.A Please provide an explanation of your preferred approach

### **Question 5: Do you have any other comments?**

## Appendix 3: List of submitters

The table below is a list of all submissions made for the third round of consultation.

Submission #	Organisation	Name		Type
1	Individual	Dan	Sullivan	Written
2	Christian Savings Limited	James	Palmer	Written
3	Individual	Wendy	Duggan	Written
4	InvestNow	Mike	Heath	Written
5	Bell Gully	David	Craig	Written
6	Andrew Body Limited	Andrew	Body	Written
7	Trustee Corporations Association of NZ	David	Douglas	Written
8	Institute of Directors	Selwyn	Eathorne	Written
9	The New Zealand Initiative	Chelsy	Killick	Written
10	SAHD Group	Greer	O'Donnell	Written
11	Business New Zealand	John	Pask	Written
12	Insurance Council of NZ	Nick	Whalley	Written
13	Mayne Wetherell	Courtney	Naughton	Written
14	Australian Securitisation Forum	Chris	Dalton	Written
15	Housing Foundation	Dominic	Foote	Written
16	Financial Services Federation	Lyn	McMorran	Written
17	Community Housing Aotearoa	Scott	Figenshow	Written
18	Individual	Kaja	Stojkov	Written
19	Individual	Simon	Jensen	Written
20	BNZ	Paul	Hay	Written
21	Credit unions and building societies sector	Emma	Geard	Written
[35]				
23	Finance company sector	Michelle	Tustin	Written
[25]				
25	Individual	Martin	Taylor	Written
26	Prospa	Deevya	Desai	Written

Submission #	Organisation	Name		Type
27	Individual	Grant	Spencer	Written
28	Financial Services Council	Richard	Klipin	Written
29	Cooperative Housing NZ Incorporated	Gillian	Cook	Written
30	INFINZ	Ross	Pennington	Written
31	NZBA	Olivia	Bouchier	Written
32	ASB	Jennie	Cade	Written
33	Heartland	Tessa	Budge	Written
34	Co-Op, TSB, SBS	Patrick	Wilson	Written
35	Christian Savings Limited	James	Palmer	Written
36	Individual	*		Questionnaire
37	Individual	*		Questionnaire
38	Individual	*		Questionnaire
39	Individual	*		Questionnaire
40	Individual	*		Questionnaire
41	Individual	*		Questionnaire
42	Individual	*		Questionnaire
43	Individual	*		Questionnaire
44	Individual	*		Questionnaire
45	Individual	*		Questionnaire
46	Individual	*		Questionnaire
47	Individual	*		Questionnaire
48	Individual	*		Questionnaire
49	Individual	*		Questionnaire
50	Individual	*		Questionnaire
51	Individual	*		Questionnaire
52	Individual	*		Questionnaire
53	Individual	*		Questionnaire
54	Individual	*		Questionnaire
55	Individual	*		Questionnaire

Submission #	Organisation	Name		Type
56	Individual	*		Questionnaire
57	Individual	*		Questionnaire
58	Individual	*		Questionnaire
59	Individual	*		Questionnaire

\*The questionnaire was completed anonymously.

## Appendix 4: List of abbreviations

Full form	Abbreviation
Anti-Money Laundering and Countering Financing of Terrorism Act 2009	AML/CFT
Australian Prudential Regulation Authority	APRA
Bank of England	BoE
Bank of New Zealand	BNZ
Corporations (Investigations and Management) Act 1989	CIMA
Companies Act 1993	Companies Act
Credit Unions and Building Societies	CUBS
Debt to Income ratio	DTI
Deposit Takers Act (legislation governing deposit takers)	DTA
Directors and Officers	D&O
Financial Markets Authority	FMA
Financial Markets Conduct Act 2013	FMCA
Financial Market Infrastructure	FMI
Financial Services Federation	FSF
Financial Services Council	FSC
Institute of Directors	IoD
Insurance Council of New Zealand	ICNZ
Insurance (Prudential Supervision) Act 2010	IPSA
Loan to Value Ratio	LVR
New Zealand Bankers' Association	NZBA
Non-Bank Deposit Taker	NBDT
Non deposit taking lender	NDTL
Public Consultation documents on the Reserve Bank Act Review – first round, second round and third round	C1, C2 and C3, respectively
Quantitative Easing	QE
Reserve Bank of New Zealand	Reserve Bank
Reserve Bank of New Zealand Bill ( <i>Institutional Act</i> )	IA
The Reserve Bank Act Review	The 'Review'
Trustee Corporations Association of New Zealand	TCA